

Remarks

Claims 25-46 are pending. Claims 25-27, 30, 33, 34-38, 41, and 44 have been amended.

Rejection of Claims under 35 U.S.C. § 112

Claims 25-46 are rejected under 35 U.S.C. § 112, second paragraph. Claims 25-27, 30, 33, 34-38, 41, and 44 have been amended to address the Examiner's rejection.

Rejection of Claims under 35 U.S.C. § 103

Claims 25-29, 31-40, and 42-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mashayekhi et al., U.S. Patent No. 6,922,791 (Mashayekhi) in view of Stiffler, U.S. Patent No. 5,958,070. Claims 30 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mashayekhi and Stiffler in view of Imes, U.S. Patent Publication No. 2004/0049579. The applicants respectfully traverse these rejections.

Mashayekhi and Stiffler taken alone or in combination neither teach nor suggest a method comprising:

when the set of systems is empty,
 using a respective priority for each of the applications for identifying a resource to free, wherein
 the resource is one of a plurality of resources, and
 each resource is associated with at least one of the plurality of systems,
 as required by independent claim 25 and generally required by independent claim 36.

Regarding the claim limitations, the Examiner refers to Mashayekhi, column 8, lines 28-34, and Stiffler, column 10, lines 16-22, which state:

It is then determined whether the weight is sufficiently low to indicate that the node has sufficient available resources to satisfy the resources needed by the failed node (step 604b), as was determined at step 601a. If so, then that node is assigned as the failover node (step 605b). If not, then next node is examined, and so on until a suitable failover node is found.

and

After a failure of one of the computers, the surviving computer 1) may run applications of both computers (itself and the failed computer) with a

decrease in throughput for any one application, or 2) may terminate its own applications and only run those of the failed computer, or 3) may run a subset of the combined applications that are of sufficiently high priority.

While the cited portion of Mashayekhi describes examining nodes until a suitable failover node is found, it provides no teaching or suggestion regarding the situation where the set of systems that meet an application hosting requirement is empty, i.e., where none of Mashayekhi's failover nodes are suitable. As for the use of application priority in identifying a resource, the Stiffler is similarly lacking. The cited portion of Stiffler merely states that after a failure condition, a subset of the combined applications that are of sufficiently high priority may be executed. Although Stiffler suggests choosing applications to run based on their priority, there is no teaching or suggestion to use application priority *for identifying a resource to free*, as required by the applicants' claims.

The Examiner goes on to justify the combination of the two references:

[B]ecause both teachings deal with failing over application of a first node to a second node. Furthermore, the teachings of Stiffler to use priorities of applications to free resources to run applications would improve the system of Mashayekhi by ensuring that high priority applications of a failed node may operate on another node when a suitable failover node cannot be found. (Office Action of June 12, 2006, p. 4, no. 9.)

The applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. In addition to the claim elements not taught or suggested by the cited references as described above, the Examiner has not shown that there is some suggestion or motivation to combine the references, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. First, neither reference suggests such a combination. Second, the mere fact that the references are in the same field of art (and the applicants do not concede this point) is insufficient suggestion or motivation to combine. Third, the portions of Stiffler referenced by the Examiner do not teach or suggest using "priorities of applications to free resources to run applications," as indicated by the Examiner. Finally, the applicants respectfully submit that the Examiner has failed to explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would

have suggested the combination, as required by, for example, *In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998).

Accordingly, the applicants respectfully submit that independent claims 25 and 36 are allowable over Mashayekhi and Stiffler. Claims 26-35 depend from claim 25 and are allowable for at least this reason. Claims 37-46 depend from claim 36 and are allowable for at least this reason.

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on Sept 12, 2006.


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9/12/06
Date of Signature

Respectfully submitted,



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